

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALBERT E. PAPPIN, JR.,

CASE NO. 1:05-CV-00022-REC-LJO-P

Plaintiff,

**ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND**

V.

(Doc. 1)

JEANNE S. WOODFORD, et al.,

Defendants.

I. Screening Order

A. Screening Requirement

Plaintiff Albert E. Pappin, Jr. (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January 5, 2005.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
2 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
3 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467
4 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt
5 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this
6 standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg.
7 Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most
8 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395
9 U.S. 411, 421 (1969).

10 B. Summary of Plaintiff's Complaint

11 The events at issue in the instant action allegedly occurred at the California Correctional
12 Institution in Tehachapi, where plaintiff is presently incarcerated. Plaintiff names California
13 Department of Corrections Director Jeanne S. Woodford, Appeals Coordinator Suzan Whitlach, and
14 Warden W. J. Sullivan as defendants. Plaintiff is seeking money damages.

15 Plaintiff alleges that his attempts to secure a proportionality review of his criminal sentence
16 via the inmate appeals process were thwarted when his appeals were repeatedly screened out by staff.
17 Plaintiff alleges claims for relief for violation of the First Amendment and the Due Process and
18 Equal Protection Clauses of the Fourteenth Amendment, and for conspiracy.

19 C. Plaintiff's Section 1983 Claims

20 1. Equal Protection and Due Process Claims Stemming from Failure to Provide
21 Proportionality Review

22 Plaintiff is attempting, in part, to seek damages in this action for the alleged failure to prison
23 officials to conduct a proportionality review of his sentence. Plaintiff may not do so. A federal
24 petition for writ of habeas corpus concerns whether a petitioner is in custody in violation of the
25 Constitution. 28 U.S.C. § 2254(a). While challenges to a state court's incarceration of a petitioner
26 or the length of that incarceration are proper in a petition for writ of habeas corpus, challenges to the
27 conditions of prison life are properly brought under 42 U.S.C. § 1983. See McCarthy v. Bronson,
28 500 U.S. 136, 142, 111 S.Ct. 1737, 1741-1742 (1991); Preiser v. Rodriguez, 411 U.S. 475, 498-99

1 n.15, 93 S.Ct. 1827, 1840-1841 n.15 (1973); Advisory Committee Notes to Rule 1 of the Rules
2 Governing Section 2254 Cases. Plaintiff's claim concerning the review of his sentence amounts to
3 a challenge to his conviction and sentence, not to a challenge to his conditions of confinement. This
4 claim is barred at this time. Plaintiff's sole avenue to challenge his conviction and/or sentence is via
5 a petition for writ of habeas corpus.

6 2. Inmate Appeals Process and Screening of Appeals

7 Plaintiff alleges a claim for relief based on the screening out of his inmate appeals. Such a
8 claim fails as a matter of law.

9 The Due Process Clause protects prisoners from being deprived of liberty without due
10 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of action
11 for deprivation of due process, a plaintiff must first establish the existence of a liberty interest for
12 which the protection is sought. "States may under certain circumstances create liberty interests
13 which are protected by the Due Process Clause." Sandin v. Conner, 515 U.S. 472, 483-84 (1995).
14 Liberty interests created by state law are generally limited to freedom from restraint which "imposes
15 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life."
16 Sandin, 515 U.S. at 484.

17 "[A prison] grievance procedure is a procedural right only, it does not confer any substantive
18 right upon the inmates." Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v.
19 DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th
20 Cir. 2003) (no liberty interest in processing of appeals because no entitlement to a specific grievance
21 procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure
22 confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). "Hence,
23 it does not give rise to a protected liberty interest requiring the procedural protections envisioned by
24 the Fourteenth Amendment." Azeez v. DeRobertis, 568 F. Supp. at 10; Spencer v. Moore, 638 F.
25 Supp. 315, 316 (E.D. Mo. 1986). Actions in reviewing prisoner's administrative appeal cannot serve
26 as the basis for liability under a § 1983 action. Buckley, 997 F.2d at 495. Defendants' decisions to
27 screen out plaintiff's appeals do not form a basis upon which to impose liability under section 1983
28 because plaintiff does not have a constitutionally protected right to a grievance procedure.

1 With respect to plaintiff's contention that the rejection of his appeals constitutes denial of
2 access to the courts, inmates have a fundamental constitutional right of access to the courts. Lewis
3 v. Casey, 518 U.S. 343, 346 (1996). The right of access is merely the right to bring to court a
4 grievance the inmate wishes to present, and is limited to direct criminal appeals, habeas petitions,
5 and civil rights actions. Id. at 354. An inmate claiming interference with or denial of access to the
6 courts must show that he suffered an actual injury. Id.

7 Plaintiff has alleged no facts that demonstrate that he has suffered any actual injury as a result
8 of the screening out of his appeals. As set forth in subsection 1, to the extent that plaintiff is
9 contending his ability to challenge his conviction and sentence are being blocked, plaintiff must
10 bring his challenge to his sentence and conviction via a habeas petition.

11 3. Conspiracy

12 In the context of conspiracy claims brought pursuant to section 1983, such a complaint must
13 "allege [some] facts to support the existence of a conspiracy among the defendants." Buckey v.
14 County of Los Angeles, 968 F.2d 791, 794 (9th Cir. 1992); Karim-Panahi v. Los Angeles Police
15 Department, 839 F.2d 621, 626 (9th Cir. 1988). Plaintiff must allege that defendants conspired or
16 acted jointly in concert and that some overt act was done in furtherance of the conspiracy. Sykes v.
17 State of California, 497 F.2d 197, 200 (9th Cir. 1974).

18 Plaintiff has not alleged any facts supporting the existence of a conspiracy between
19 defendants. Further, plaintiff has not alleged facts demonstrating that defendants violated his
20 constitutional rights. In order to state a cognizable claim for relief for conspiracy, plaintiff must
21 establish that defendants conspired to violate an underlying constitutional right.

22 D. Conclusion

23 The court finds that plaintiff's complaint does not contain any claims upon which relief may
24 be granted under section 1983. The court will provide plaintiff with the opportunity to file an
25 amended complaint. In his amended complaint, plaintiff shall omit the claims that are not cognizable
26 under section 1983 and, to the extent that plaintiff believes in good faith he has claims cognizable
27 under section 1983, plaintiff shall cure the deficiencies identified by the court in this order and
28 clarify the basis for his claims.

1 Plaintiff is informed he must demonstrate in his complaint how the conditions complained
2 of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d
3 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
4 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
5 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.
6 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,
7 743 (9th Cir. 1978).

8 Further, supervisory personnel are generally not liable under section 1983 for the actions of
9 their employees under a theory of respondeat superior and, therefore, when a named defendant holds
10 a supervisorial position, the causal link between him and the claimed constitutional violation must
11 be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld,
12 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief
13 under section 1983 for supervisory liability, plaintiff must allege some facts indicating that
14 supervisory defendants either: personally participated in the alleged deprivation of constitutional
15 rights; knew of the violations and failed to act to prevent them; or promulgated or "implemented a
16 policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving
17 force of the constitutional violation.'" Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal
18 citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

19 Finally, plaintiff is advised that Local Rule 15-220 requires that an amended complaint be
20 complete in itself without reference to any prior pleading. As a general rule, an amended complaint
21 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once
22 plaintiff files an amended complaint, the original pleading no longer serves any function in the case.
23 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
24 of each defendant must be sufficiently alleged.

25 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

26 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state any claims
27 upon which relief may be granted under section 1983;

28 2. The Clerk's Office shall send plaintiff a civil rights complaint form;

- 1 3. Within **thirty (30) days** from the date of service of this order, plaintiff shall file an
- 2 amended complaint; and
- 3 4. If plaintiff fails to file an amended complaint in compliance with this order, the court
- 4 will recommend that this action be dismissed, without prejudice, for failure to state
- 5 a claim upon which relief may be granted.

6

7 IT IS SO ORDERED.

8 **Dated:** July 22, 2005
9 b9ed48

 /s/ **Lawrence J. O'Neill**
 UNITED STATES MAGISTRATE JUDGE